UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and Case 07–CA–086657

BRANCH 3126, NATIONAL ASSOCIATION
OF LETTER CARRIERS (NALC), AFL–CIO

Robert Buzaitis, Esq., for the Acting General Counsel.
David F. Wightman, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. This case arises out of an October 26, 2012[1] complaint and notice of hearing that stems from unfair labor practice (ULP) charges that Branch 3126, National Association of Letter Carriers (NALC), AFL–CIO (the Union) filed against the United States Postal Service (the Respondent), concerning conduct at the Novi, Michigan post office (the facility or Novi).

I held a trial in Detroit, Michigan, on December 17, at which I afforded the parties full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

Issues

(1) After the Union filed a grievance on June 21, alleging that the Respondent failed to properly adjust certain carriers' routes, did the Respondent fail and refuse to provide the Union with route adjustment packages as per the Union's June 21 written request?

(2) Did the Respondent fail and refuse to provide the Union with carrier time records and forms 1813, 3921, 3923, and 3997 for certain routes at the facility as per the Union's July 19 written request?

(3) Did the Respondent unreasonably delay providing the Union with forms 3996 and work-hour/workload reports for those routes as per the Union's July 19 written request?

[1] All dates are in 2012.

Witnesses and Credibility

Steward Linda Bidwell and Alternate Steward Sherri McIntosh testified for the Acting General Counsel; William Walther, at all times pertinent the facility's postmaster, testified for the Respondent.

Neither Bidwell and McIntosh nor Walther offered fully complete, detailed, and unequivocal testimony concerning all of their numerous verbal communications bearing on the information requests. In view of the total lack of any written memorializations of such interactions, either in the way of confirming letters or memoranda, this was not surprising.

No documents of record confirm if and when the Respondent provided any of the requested documents—or corroborate either Bidwell and McIntosh vis-a-vis Walther where their testimony diverged. In this regard, Walther testified about the existence of only one such document, which notated what items of information the Respondent provided to the Union; however, he further testified that the document could not be located.[2] Nor do any records establish what documents Walther furnished to McIntosh during their pregrievance meetings concerning route readjustments. This informal way in which the parties handled their dealings may have had certain benefits but was not desirable from the standpoint of an evidentiary record in the event of dispute and litigation.

I will further address credibility in the context of specific conversations to which Bidwell and Walther testified.

Facts

Based on the entire record, including testimony and my observations of witness demeanor, documents, and stipulations, as well as the posttrial briefs that the Acting General Counsel and the Respondent filed, I find the following.

The Respondent and the National Association of Letter Carriers are parties to a nationwide collective-bargaining agreement, effective by its terms from November 16, 2006, through November 20, 2011, covering all full-time and regular part-time city letter carriers. Its application to the instant matter is undisputed. Article 19 of the agreement provides that management furnish the Union with notice of changes directly relating to wages, hours, or working conditions.[3]

Branch 3126 represents carriers at a number of branches, including the facility. Once or twice a year, management at the facility conducts route adjustments, to ensure that carriers' routes are as close to 8 hours as possible. After such adjustments, the carriers perform their new assignments and, if the routes are still out of adjustment, management must readjust them within 120 days.

[2] Tr. 103.
[3] GC Exh. 11.

On about January 21, Novi management conducted route adjustments. During the period from January to May, Walther and McIntosh met to engage in route readjustments, and they reviewed some of the form documents comprising route adjustment packages. Neither party kept notes of these meetings or recorded what documents management produced. Walther's and McIntosh's testimony differed on what documents Walther furnished to McIntosh during those meetings and to what extent they included route adjustment documents that Bidwell later requested. McIntosh's testimony was equivocal on what copies she retained. Although the Respondent now claims that certain requested documents had been furnished to McIntosh, the Respondent never raised this contention in response to Bidwell's information request and, accordingly, I will not consider it now. To do otherwise would fly in the face of the Respondent's obligation to meaningfully respond to the Union's information request and wrongfully place the burden on the Union to have discerned what might have been provided during informal meetings that were not in any way memorialized in writing.

By the end of the 120 days, the Union concluded that routes 2, 15, 71, and 72 needed further adjustments, and it filed a grievance on June 21, contending that the Respondent violated article 19 by failing to properly adjust those routes to as close as possible to 8 hours.[4] On the same day, the Union filed a request for information for the route adjustment packages for routes 2, 15, 71, and 95 (an auxiliary route of less than 8 hours).[5]

The route adjustment packages consist of several forms, including form 1840, which shows new route adjustments after management has completed the form 3999, which shows the results of a field inspection, and form 1838C, which is management's office review of the route. Bidwell testified that the Union needed the information to show what the routes were before the adjustment and that they were over or under 8 hours (overburdened or under burdened).

The Respondent never provided the requested information or responded that the information did not exist.

Bidwell filed a second information request, on July 19, in which she requested carrier time records, work-hour/workload reports, and forms 1813, 3921, 3923, 3996, and 3997 for routes 2, 15, 71, and 72, for the period after they were adjusted in January.[6] Bidwell testified that she requested this information for the same reasons that she had requested the earlier information.

Carrier time records (form 1840B) are delivery operation instruction system (DOIS) reports that analyze how much time carriers work on each day of the week (e.g., Mondays), usually over an 8-week period.

Work-hour/workload reports show on a daily basis how much time is used on each route, the projected time a carrier should leave and return from the office, and the route's volume for the day. They thus show whether a route is overburdened or under burdened.

[4] GC Exh. 2.
[5] GC Exh. 3.
[6] GC Exh. 4.

Form 1813[7] is a late leaving and returning report that demonstrates if a route is overburdened and the carrier is leaving late.

Form 3921[8] is a volume recording worksheet that shows whether volume has increased on a route.

Form 3923, a DOIS report, is an efficiency record used to determine if an operation is running efficiently on a daily basis.

Form 3996[9] is a form that a carrier submits to management in the morning to determine if he or she is going to be over 8 hours and will need auxiliary assistance.

Form 3997[10] shows who the carrier was, the route number, leaving times, and hours worked that day.

Subsequently, Bidwell and Walther had an indefinite number of brief, informal "conversations" about the information requests at various areas of the facility. Neither of their recollections was comprehensive or detailed. Bidwell would ask if he had any information yet. Sometimes, Walther would indicate that management was in the process of obtaining it.

Walther testified that "probably" in July or August, "more than likely" in the conference room,[11] Bidwell asked where the Respondent was in terms of getting the information for the July request, and he purportedly told her that Novi did not use the forms 3921, 3923, or 3997. In light of Walther's tentativeness as to the foundation of the conversation, the lack of any documentary corroboration of what he allegedly said, and the Respondent's failure to plead nonexistence of information as a defense, I decline to credit this testimony over Bidwell's testimony that he later told her that one form (3921 or 3923) was not used. Walther further testified that he told her in the conversation that the Respondent was working on getting the rest of the information, which involved a large amount of information.[12]

The grievance went to a resolution team composed of management and union representatives who, on August 30, issued a decision remanding the grievance to the parties due to the issue of timeliness, and instructing management to supply the requested information and to meet with the Union within 7 days.[13]

On about September 11, Walther furnished Bidwell with the work-hour/workload documents and the forms 3996. At the time, he told her that management did not use one of the requested forms, either the 3921 or the 3923 (she could not recall which). Walther and Bidwell met and settled the grievance at the end of September or early October. Bidwell testified that

[7] GC Exh. 7.
[8] GC Exh. 6.
[9] GC Exh. 9.
[10] GC Exh. 5.
[11] Tr. 94.
[12] This one conclusionary and unsubstantiated statement fell far short of articulating a cogent claim of "burdensomeness."
[13] GC Exh. 8. The decision noted (at p. 2) that "information is not being provided."

Walther did not ask her if she still needed the forms 1813; Walther, on the other hand, testified that he did ask her and that she equivocated on whether she still needed them. Bidwell testified that she still needed these forms because the routes in question would be adjusted again, and the Union questioned the integrity of the data that the Respondent had used. I find Bidwell's version more plausible and therefore credit it. In any event, even according to Walther's account, Bidwell's response did not amount to an unequivocal retraction of her request. The routes were finally adjusted in October.

As of the trial date, the Respondent never provided the carrier time records or forms 1813, 3921 or 3923, or 3997, or stated that the forms 1813, 3997, and either the 3921 or 3923 do not exist.[14] The Respondent never asked for any clarification or contended that any of the requests were irrelevant, overly broad or burdensome. The Respondent never responded in writing to either the June 21 or July 19 requests.

Applicable Law

A union is entitled to information in the employer's possession that it needs to fulfill its representational duties to the bargaining unit. *NLRB v. Acme Industrial Co.,* 383 U.S. 432, 437 (1967). The standard for determining the relevance of information requested by a union is a broad, "discovery-type" standard. Id. at 437 fn. 6. An employer is required to furnish grievance-related information to the union so that the union can determine whether to pursue the grievance to arbitration. Id. at 437. To make this determination, the union must assess not only the merits of the grievance but also the adequacy of any remedial action that the employer has taken. E.g., *Postal Service,* 276 NLRB 1282, 1286 (1985).

When a union makes a request for such presumptively relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information will not be furnished. *Regency Service Carts, Inc.,* 345 NLRB 671, 673 (2005); *Beverly California Corp.,* 326 NLRB 153, 157 (1998). Put another way, when information is presumptively relevant, the employer has the burden of rebutting the presumption by showing that the information is either not relevant or cannot, in good faith, be supplied *Coca Cola Bottling Co.,* 311 NLRB 424, 425 (1993).

An employer violates Section 8(a)(5) by not furnishing information when it has not objected to its relevance, or claimed that the information does not exist in the form requested by the union and that it could not produce the requested information in some form. *NTN Bower Corp.,* 356 NLRB No. 141 (2011). If the information exists but not in the form that the union requests it, the employer must make some effort to inform the union so that the union may amend its request accordingly. *Postal Service,* 276 NLRB 1282 (1985); *Westinghouse Electric Corp.,* 239 NLRB 106 (1978). The employer's obligation is to provide the information that it has available, compile it, or give the union access to the records from which it can compile the information. *Champ Corp.,* 291 NLRB 807, 878 (1988), enfd. 933 F.2d 688 (9th Cir. 1990).

[14] I disregard Walther's testimony to the contrary, emphasizing that the defense of nonexistence (other than for form 3921 or 3923) was never communicated to the Union. I further note his testimony that computerized information could have been used to generate at least some of the information contained in forms 3921 and 3997. Tr. 104.

An employer must provide the requested information in a timely manner, since "[a]n unreasonable delay in furnishing requested information is as much a violation as an out-and-out refusal to provide such information." *Teamsters Local 921 (San Francisco Newspaper),* 309 NLRB 901, 901–902 (1992); see also *Amersig Graphics, Inc.,* 334 NLRB 880, 897 (2001); *Bundy Corp.,* 292 NLRB 671, 672 (1989) (6-week delay). In determining whether an employer unlawfully delayed in responding to an information request, the Board looks to the totality of the circumstances, including the complexity and extent of the information sought, its availability and the difficulty in its retrieval. *West Penn Power Co.,* 339 NLRB 585, 587 (2003), enfd. in pertinent part 349 F.3d 233 (4th Cir. 2005)); *Amersig Graphics,* above at 885.

Conclusions

As the above legal framework establishes, requested information that pertains to grievances is presumptively relevant. Here, the Union's requested information was directly related to its route adjustment grievance, and the Respondent has never contended that any of the information sought was irrelevant.

To the extent that Walther's testimony raised defenses never voiced to the Union prior to the hearing, they were not timely presented so as to provide the Union with the opportunity to modify its requests or to seek the information through other documents. Therefore, I have not considered them. See *Pulaski Construction Co.,* 345 NLRB 931, 937–938 (2005) (the respondent had the obligation to raise and discuss with the union any arguments that a request was burdensome or raised confidentiality concerns); *A-Plus Roofing,* 295 NLRB 967, 972 (1989) (a claim of burdensomeness must be "seasonably" raised with the union, citing *J. I. Case Co. v. NLRB*, 253 F.2d 149, 156 (7th Cir. 1958)).

The fact that the underlying grievance was later settled does not render moot the instant ULP charges. The information that the Union sought could have disclosed facts that affected the terms under which the Union agreed to settle and/or could have resulted in an earlier resolution of the grievance. The information could potentially lead to another grievance. Moreover, the routes in question will be subject to periodic future adjustments, and the Union was not fully satisfied with the data that the Respondent presented.

I am not aware of any precedent holding that an employer is required to respond in writing to a written information request. Nonetheless, good business practice strongly suggests that an employer reply in that fashion. In any event, the Respondent failed to raise any objections to the Union's information requests; that any of the information sought was irrelevant, difficult to obtain, burdensome, or otherwise not subject to being furnished.

Nor did the Respondent aver that the documents (with the exception of the form 3921 or 3923) did not exist or that it could not compile the information from existing records. Indeed, Walther conceded that computerized data could have been used to generate reports containing at least some of the information described in forms 3921 and 3997. If any such documents did not exist, the Respondent was obliged to notify the Union as soon as possible and afford the Union an opportunity to determine how the information might otherwise be obtained (see the decisions cited above). Walther's waiting until September 11 to tell Bidwell that management did not utilize one of the forms hardly satisfied this obligation.

Accordingly, I conclude that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with the route adjustment packages, carrier time records, and forms 1813, 3921, 3923, and 3997.

I now turn to the work-hour/workload reports and the forms 3996, which the Respondent did not provide to the Union until on about September 11. The Respondent offered no explanation of why it took approximately 7 weeks to comply with the July 19 request. Thus, the Respondent never advised the Union that such documents were difficult to access or retrieve or that the Respondent faced any other obstacles to expeditiously providing them.

Accordingly, I conclude that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to timely provide the Union with the work-hour/workload reports and the forms 3996.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act:

(a) Failed and refused to provide the Union with information that the Union requested on June 21 and July 19 relating to a grievance concerning route readjustments.

(b) Failed and refused to timely provide the Union with information that the Union requested on July 19 relating to said grievance.

REMEDY

Because I have found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Acting General Counsel (GC Br. at 10 et seq.) seeks as part of the remedy a general affirmative bargaining order, based on what he contends is the Respondent's history of violations of the Act relating to failing and refusing to provide information and unreasonably delaying in providing information, both at facilities where the Union represents employees and at other facilities nationwide.

Although the Acting General Counsel cites a number of cases in which the Respondent was found to have failed to provide information, there is no way for me to put them in the necessary context of the number of information requests that the Union makes nationwide on an annual basis. In such a vacuum, I cannot make any determination of whether those violations represented a small or large percentage compared with the total number of requests made and with which the Respondent complied, or whether the Respondent has a pattern and practice of unlawfully failing to furnish requested information.

Moreover, the Board's general approach is to not include bargaining orders in cases involving failure to provide information. Thus, in another case involving the Respondent's failure to provide information, *U.S. Postal Service,* 356 NLRB No. 75, slip op. at 9 fn 2 (2011), vacated on other grounds 660 F.3d 65 (1st Cir. 2011), the Board deleted a judge's remedy providing for a general bargaining order as "not warranted to remedy this information request violation," citing *H & R Industrial Services,* 351 NLRB 1222, 1222 fn. 3 (2007). The Acting General Counsel has cited no Board precedent to the contrary. Accordingly, I decline to include a bargaining order as part of the remedy and instead find a standard order sufficient.

The Acting General Counsel suggests, but does not explicitly request, a remedy that goes beyond the facility at which the violations occurred. For the reasons stated above, I cannot conclude that the violations were part of a broader pattern of misconduct that extended beyond the parameters of Novi. Accordingly, I will limit my order and notice to the facility.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, United States Postal Service, Novi, Michigan, shall

1. Cease and desist from

(a) Failing and refusing to provide, or failing and refusing to timely provide, the Union with information the Union requests that is relevant and necessary to its role as the collective-bargaining representative of employees, including the filing and processing of grievances on their behalf.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) At the Union's request, to the extent that the information was not already furnished, provide the Union with the information that it requested on June 21 and July 19, 2012, or, if such information does not exist in the forms requested, so advise the Union and provide to the Union what is available, compile the information, or give the Union access to the records from which it can compile the information.

(b) Within 14 days after service by the Region, post at its facility in Novi, Michigan copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by

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[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted

the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places at all facilities where the unlawful policy has been or is in effect, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices should be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 21, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 4, 2013.

_____
Ira Sandron
Administrative Law Judge

Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

Branch 3126, National Association of Letter Carriers (NALC), AFL–CIO (the Union) represents our full-time and regular part-time city letter carriers (unit employees).

WE WILL NOT fail and refuse to timely provide the Union with information that it requests that is necessary and relevant to its role as the collective-bargaining representative of unit employees, including the filing and processing of grievances on their behalf.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, at the Union's request, to the extent that we have not already furnished it, provide the Union with the information that it requested on June 21 and July 19, 2012, relating to the grievance it filed on route adjustments or, if such information does not exist in the forms requested, so advise the Union and provide to the Union what is available, compile the information, or give the Union access to the records from which it can compile the information.

UNITED STATES POSTAL SERVICE
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under

the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2569

(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3244.